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May 31, 2016

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OFFICE OF GENERAL
COUNSEL

Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Mary Beth deBeau, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Matter Under Review 7044

Dear Mr. Jordan:

On April 26, 2016, the Federal Election Commission ("FEC" or "Commission") notified our client, Scott Laboratories, Inc., of a complaint filed by one candidate for the Republican nomination in Texas' 19th congressional district, Mr. Glen Charles Robertson, against a competing candidate, Mr. Jodey Arrington. Mr. Arrington also serves as President of Scott Laboratories.

The complaint's central allegation is that Mr. Arrington violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by accepting prohibited corporate contributions by "spending [his] full-time campaigning, and yet still being apparently paid on a full-time basis from Scott Laboratories." Compl. at 2. As we explain further below, the complaint is based on little more than politically-motivated speculation and media sources that do not support the underlying charge. All salary payments made by Scott Laboratories to Mr. Arrington were in fact consistent with the Commission's three-part exemption for payments for *bona fide* employment found in 11 C.F.R. § 113.1(g)(6)(iii). Accordingly, the Commission should find no reason to believe that Scott Laboratories violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and close the file in this matter.

FACTUAL BACKGROUND

Scott Laboratories is a Texas-based corporation engaged in several enterprises. The company is the developer of "Sedasy," a patented system licensed to Johnson & Johnson for "moderate sedation designed to manage pain and alleviate patient anxiety during medical procedures." Grace Health System, Doctor Biography.¹ Scott Laboratories is also the holding company for Grace Health System, the "only locally-owned, doctor-operated health facility" in the Lubbock,

¹ Available at <https://gracehealthsystem.com/doctors/hickle/>.

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Texas area that generates approximately \$100 million in annual revenue and serves a community of over 1.4 million people. Grace Health System, Why Grace?² see also Declaration of Dr. Randy Hickle ("Hickle Decl.") at ¶ 2. The facility maintains a "Walk-In Clinic, primary care center, and specialists ranging from orthopedic surgery and podiatry to women's health and rheumatology all under one roof." *Id.* Both Grace Health System and Scott Laboratories are also working to provide telemedicine solutions to rural Texas communities. Ellysa Gonzalez, Local Hospitals Filling Care Gaps Through Outreach Programs, Lubbock Avalanche-Journal (Nov. 15, 2015).³

Over the nine years of its existence, Grace Health System became relatively well-known among Lubbock's 200,000 residents, but the majority of potential patients and referring physicians outside the city's limits knew little about its ability to provide high-quality, comprehensive care. See Hickle Decl. at ¶ 8. Thus, relationship-building in rural communities represented the biggest opportunity for Grace Health System to increase its market share and to offer a better quality of life for more Texas residents. *Id.*

Throughout most of their organizations' histories, both Scott Laboratories and Grace Health System were managed by one individual, Dr. Randy Hickle. *Id.* at ¶¶ 2-3. In the few years immediately before Mr. Arrington came to Scott Laboratories, Dr. Hickle had hired six employees to assist with growing the Grace Health System through outreach to rural communities and cities outside of Lubbock. *Id.* at ¶ 9. These staff members, however, were not known in the surrounding area, did not have a network of business contacts, and generally preferred to spend much of their time at their desk or in meetings very close to Lubbock. *Id.* As a result, their outreach efforts were unsuccessful, and they were let go or reassigned to other jobs in the organization. *Id.*

In 2014, a decision was made to bifurcate the management structure of the two corporate entities and to establish the president of Scott Laboratories as a separate position. *Id.* at ¶ 10. In considering potential candidates for this opening, Mr. Arrington stood out right away. *Id.* at ¶ 11. He was then serving as the Vice

² Available at <https://gracchealthsystem.com/about-us/why-grace/>.

³ Available at <http://lubbockonline.com/local-news/2015-11-14/local-hospitals-filling-care-gaps-through-outreach-programs#.VzI8I4SDFBc>.



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Chancellor for Research, Commercialization, and Federal Relations at Texas Tech University, a position he had held for nearly three years. *See* LinkedIn profile of Jodey C. Arrington.⁴ In this capacity, his duties included “bringing the universit[y]’s technology and innovations to the marketplace [and] helping secure public and private research funding through federal and corporate relations.” Allison Howard, Arrington Named Vice Chancellor for Research and Commercialization.⁵ In hiring Mr. Arrington for this position, university officials had praised “Jodey’s strong leadership, experience within the Texas Tech University System, and contacts throughout the state and country [as] invaluable to our success.” Before serving in this position, Mr. Arrington also had “compiled an extensive background in executive leadership at both the state and federal levels.” *Id.* He had served as Chief of Staff to the entire Texas Tech University System – which is comprised of approximately 15,000 employees, 40,000 students, and eight campuses throughout the state – and was previously Chief of Staff to the Federal Deposit Insurance Corporation and a Special Assistant to President George W. Bush. *See* LinkedIn profile of Jodey C. Arrington. Mr. Arrington also holds two degrees from Texas Tech and earned an international business certificate in the MBA program at Georgetown University’s McDonough School of Business. *Id.*

When Mr. Arrington joined Scott Laboratories in July 2014, he was paid the same \$220,000 salary he received while serving as Texas Tech’s Vice Chancellor. Hickle Decl. at ¶ 12. His responsibilities also were very similar to those in his prior job: to develop new business, raise funds for research and development through acquisition of new customers and by meeting potential new investors, and assist in the management of Scott Laboratories’ work in the field of telemedicine. *Id.* at ¶ 13. At all times, Mr. Arrington had significant flexibility in setting his work schedule and in determining how to strengthen the company’s business. *Id.* at ¶ 14. Nevertheless, throughout his employment, Mr. Arrington remained in close contact with Dr. Hickle and the company’s Chief Operating Office for telemedicine initiatives, joining Dr. Hickle in-person and as needed for important meetings. *Id.* at ¶ 15.

Mr. Arrington’s outreach efforts, work in developing a digital marketing and communications campaign, and face-to-face conversations with physicians, business and community leaders, and West Texas residents proved very successful,

⁴ Available at <https://www.linkedin.com/in/jodeyarrington>.

⁵ Available at <https://www.texas-tech.edu/stories/11-08-arrington-named-vice-chancellor.php>.

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and Dr. Hickle was extraordinarily satisfied with Mr. Arrington's efforts. Id. at ¶ 16. In fact, in the past eight months alone, Mr. Arrington accomplished more in developing awareness of Grace Health System and building relationships with community leaders in rural areas than the previous six employees occupying that role combined. Id. at ¶ 17. As President of Scott Laboratories and a representative of Grace Health System, Mr. Arrington has increased awareness and established relationships with dozens of potential customers and investors. Id. at ¶ 18. Not only does the company have six active contracts in the telemedicine area specifically, but looking at the overall picture, Grace Health System's revenue has grown in excess of 20% each year for the past two years. Id. at ¶¶ 19-20. While it is difficult to quantify precisely how much of this was attributable to Mr. Arrington's efforts, there is no doubt in his employer's mind that he played an important role in enhancing the corporation's public profile and in increasing overall productivity. Id. at ¶ 20.

THE LAW

The FECA prohibits corporations from contributing to candidates. See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," id. § 30101(8)(A), and also "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election to [federal office]," 11 C.F.R. § 114.1(a)(1).

There are a number of exceptions to the definition of contribution, including for disbursements related to an individual's employment. Specifically, payments to candidates for employment are not considered contributions when three conditions are met:

- (A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;
- (B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and



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(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

11 C.F.R. § 113.1(g)(6)(iii).⁶

DISCUSSION

The first element of the Commission's three-part test is whether Mr. Arrington's "compensation results from *bona fide* employment that is genuinely independent of the candidacy." *Id.* § 113.1(g)(6)(iii)(A). The "absence of any evidence tending to show that [a company and a candidate] entered into their arrangement with the intent to subsidize [the] campaign" supports dismissing a matter at the reason to believe stage. MUR 6023 (The Loeffler Group, LP and Susan Nelson), Factual and Legal Analysis at 5.

Scott Laboratories hired Mr. Arrington because of his regional profile and business contacts, fundraising capabilities, and business acumen rather than in an attempt to subsidize his campaign. In fact, at the time Mr. Arrington was hired – in July of 2014 – incumbent Congressman Randy Neugebauer was an established political figure well on his way to re-election in the 19th congressional district. *See* Blake Ursch, District 19 Congressional Candidates Discuss Key Issues, Lubbock Avalanche-Journal (Feb. 16, 2014); Eli Yokley, Neugebauer Looking for 'New Challenge' After Congress, Roll Call (Sept. 17, 2015). The fact that the Lubbock-centered congressional district was not seen as a competitive seat at the time of Mr. Arrington's hiring, in combination with Scott Laboratories' employment of Mr. Arrington for more than a year before he subsequently announced his candidacy for that seat, is powerful evidence of the *bona fide* nature of his employment. *See, e.g.*, MUR 5571, General Counsel's Report #2 at 11 (Dalton Tanonaka) (Sept. 20, 2007) (employment agreement entered into more than one year before candidate announced was evidence of a *bona fide* employment arrangement).

The decision to hire Mr. Arrington also made good business sense for Scott Laboratories given his professional background, management skills, and close ties to the Lubbock and broader West Texas community, attributes which were all relevant to his new position. *See* Hickle Decl. at ¶ 11. To that end, the

⁶ The other provisions cited in the complaint are not separately recited here as the factual and legal discussion applicable to 11 C.F.R. § 113.1(g)(6)(iii) effectively addresses those legal theories.

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Commission has previously emphasized that an employee's "substantial fundraising experience and the close ties . . . cultivated with potential donors at a prior fundraising job" are qualifications that demonstrate an employee is "uniquely suited for that position" and that an employment agreement is *bona fide* and independent of the candidate's campaign. MUR 5014 (Jeffrey Flake), General Counsel's Report #2 at 9; see also MUR 5571, General Counsel's Report #2 at 11 (recognizing the value of "business contacts" and "personal connections" when making a determination about *bona fide* employment).⁷ Mr. Arrington's business generation activities also resulted in six new clients,⁸ which although not a prerequisite to finding *bona fide* employment,⁹ further bolsters that conclusion. Cf. MUR 5260 (Jim Talent), First General Counsel's Report at 20 (Dec. 19, 2002) (observing that former government officials' recruitment of six clients supported claim that services were *bona fide*). Nothing in the complaint addresses – let alone contradicts – these points.

The second element of the FEC's test is whether the compensation paid "is exclusively in consideration of services provided by the employee as part of [his] employment." 11 C.F.R. § 113.1(g)(6)(iii)(B). This requirement is met where the complaint fails to supply evidence that compensation was provided for something other than the services provided as part of employment, see MUR 6855 (Justin Amash), Factual and Legal Analysis at 5, and detailed scrutiny and investigations looking for specific hours also are unwarranted where the employee is "hired in part because of his relationships with potential donors . . . developed over the course of several years in the fundraising business." See MUR 5014, General Counsel's Report #2 at 15. Moreover, in considering this element, the Commission has emphasized that it does not matter whether an employee works remotely or on a non-traditional schedule so long as the employee "fulfilled all of the duties and responsibilities of his employment," MUR 6853 (Wamp for Congress), Factual and Legal Analysis at 3, and – "[m]ore importantly" – that corporate officials were

⁷ In dismissing the matter, the vote certification suggests that Commission followed the Office of General Counsel's recommendation. See Certification of Oct. 9, 2003 in MUR 5014.

⁸ See Hickle Decl. at ¶ 19.

⁹ See, e.g., General Counsel's Report #2, MUR 5571, at 9 n.13 (finding *bona fide* employment even where the Office of General Counsel's analysis suggested that no new clients were generated).



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satisfied with employee's performance and believed they "received good value for the money paid," MUR 5571, General Counsel's Report #2 at 12.

As explained at the outset, Scott Laboratories officials were very satisfied with Mr. Arrington's outreach efforts and overall job performance, even after he became a congressional candidate. See Hickle Decl. at ¶ 16. The only "facts" upon which the entire complaint is based are a pair of news articles and a partial excerpt from a radio call-in show, all of which is proffered with little explanation, that allegedly suggest "Mr. Arrington is spending [his] full-time campaigning" rather than working. Compl. at 2. The reality, however, is that nothing cited supports the allegation and, in fact, the complainant here probably lacked the basic, good-faith basis necessary for filing the complaint in the first place. See 11 C.F.R. § 111.4. The first article, apparently cited for the proposition that "Mr. Arrington has been campaigning full-time since he announced his candidacy on October 15, 2015," is simply a campaign kick-off announcement that says nothing about Mr. Arrington's campaign/work balance after he started campaigning. The second article, entitled Arrington's Life on the Road As He Readies for Run-Off, says that Mr. Arrington attended a pancake *dinner* and a *weekend rattlesnake round-up*,¹⁰ which hardly suggests that he was failing to perform his corporate work duties. The fact that the article also quotes Mr. Arrington as saying "[t]he day after the election, I got up early and drove to Abilene and spent a week in Abilene" is likewise irrelevant. Mr. Arrington's workplace flexibility allowed him to do corporate outreach in communities like Abilene and, if anything, Mr. Arrington's statement about rising early suggests that he wanted to leave room for campaign activities before and/or after completing his work duties for Scott Laboratories.¹¹ Finally, in the radio transcript, Mr. Arrington says that he is "still engaged in my business," is "in continual conversation with Dr. Hickle," and works for an "employer that gives

¹⁰ See Sweetwater Jaycees, World's Largest Rattlesnake Roundup, available at <http://www.rattlesnakeroundup.net/> (stating that the event is "held the 2nd weekend in March").

¹¹ Moreover, statements like these are similar to those cited by the Commission in dismissing MUR 6853 (Weston Wamp for Congress). In that matter, the candidate was quoted in a news article as saying: "[f]or the six-and-a-half months I've been campaigning, I've been active at Lamp Post. I've been working remotely. I've been in and out of office. . . . Obviously, I've been out a bit." MUR 6853, Factual and Legal Analysis at 2. Likewise, an employer representative noted: "[Wamp is] working more remotely: His schedule has obviously flexed a lot to make up for that workload." Id.

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[him some] flexibility." All of that is consistent with the legal requirements of section 113.1(g)(6)(iii)(B).

The third element of the Commission's three-part test is whether the compensation paid to Mr. Arrington is consistent with what would be paid to a similarly qualified person. See 11 C.F.R. § 113.1(g)(6)(iii)(C). In applying this criterion, the "Commission has recognized that various intangible factors such as unique qualifications may be considered in determining reasonableness of the amounts paid to [employees]," and that some employees' activities on behalf of an employer "cannot easily be reduced to hours spent or the number of clients [one] tried to land for the company." MUR 5571, General Counsel's Report #2 at 12-13. Instead, in common-sense fashion, the Commission has recognized that employers place a value on the "relationships [one] may have developed, and fundraising experience . . . gained, long before working for [the current employer]." MUR 5014, General Counsel's Report #2 at 17 (Oct. 3, 2003). A new hire's "high public profile" and "ability to attract clients" also may factor into compensation decisions. See id.; see also First General Counsel's Report, MUR 6023 at 9 (John McCain 2008, Inc.) (noting that the "Commission has permitted compensation plans that are tied to factors other than billable hours, such as seniority, the ability to attract clients, and other skills").

Here, despite transitioning from the public to the private sector, where one often expects to get paid more, Mr. Arrington was actually paid the *same* salary working for Scott Laboratories that he previously received from Texas Tech University. See Hickle Decl. at ¶ 12. The fact that another, independent employer paid Mr. Arrington the same amount for doing effectively the same job is the quintessential example of the compensation not exceeding the amount paid to another "similarly qualified person for the same work." 11 C.F.R. § 113.1(g)(6)(iii)(C). Moreover, even if that data point did not exist, Mr. Arrington's unique background, high public profile, past fundraising relationships, and overall skillset interacting with potential customers more than justified his salary.

CONCLUSION

While the Constitution imposes certain eligibility requirements on who may run for federal office, independent wealth is not – and should not – be one of them. For our democracy to flourish, men and women of all income levels should have an

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opportunity to participate in the political process, and they should not be forced to give up their livelihood for a year or more to do so. As one commissioner observed in a related context: "I think it's good for the country to have more people who come from different walks of life feel like they can afford to try to run for Congress and that it's not something that's out of their reach."¹²

In 2014, Scott Laboratories was in need of an employee who possessed a unique skillset and deep ties to the community that could help its business grow, and they found that individual in Jodey Arrington. The following year, while continuing to provide exceptional service to his employer, Mr. Arrington decided he wanted to run for office and seek the opportunity to serve his fellow citizens in Congress. Long ago, the Commission recognized that these two pursuits could coexist and, in adopting 11 C.F.R. § 113.1(g)(6)(iii), permitted an employee to continue working in a *bone fide* employment capacity. Because Scott Laboratories' salary payments to Mr. Arrington were consistent with the three elements of that regulation, the Commission should find no reason to believe that the company violated the FECA and close the file in this matter.

Sincerely,

Michael E. Toner
Andrew G. Woodson

Enclosure

¹² Statement of Commissioner Ellen L. Weintraub, FEC Meeting of Oct. 9, 2014, available at http://www.fec.gov/audio/2014/2014100906_07.mp3 (discussing FEC Adv. Ops. 2014-14 (John Trammell) and 2014-15 (David Alan Brat)).

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State of Texas)
Lubbock County)

OFFICE OF GENERAL COUNSEL
Matter Under Review 7044

DECLARATION OF DR. RANDY HICKLE

I, Dr. Randy Hickle, hereby declare as follows:

1. I have personal knowledge of all information contained in this Declaration.
2. Currently, I am the Chairman of the Grace Health System, a locally-owned, doctor-operated health facility in Lubbock, Texas that generates approximately \$100 million in annual revenue and serves a community of over 1.4 million people. I also am the President of Grace Clinic, which is a 55-doctor, multi-specialty practice, as well as a practicing physician with over thirty years of experience.
3. Until 2014, I was also President of Scott Laboratories, a research and development engineering company. Scott Laboratories owns a company called Grace Holdings, which itself owns a hospital called Grace Medical Center that is located in Lubbock. Grace Medical Center, in turn, owns Grace Clinic. These latter three entities are collectively referred to as the Grace Health System.
4. While I am no longer President of Scott Laboratories, I remain responsible for the hiring, firing, and evaluation of its leadership.
5. On April 26, 2016, Scott Laboratories received notification that a candidate for the Republican nomination in Texas' 19th congressional district, Mr. Glen Charles Robertson, filed a complaint with the Federal Election Commission against a competing candidate, Mr. Jodey Arrington. Mr. Arrington currently serves as President of Scott Laboratories.
6. I have read this complaint and am familiar with its contents.
7. My understanding is that the complaint alleges Mr. Arrington violated federal campaign finance laws by accepting a salary from Scott Laboratories but that, in reality, Mr. Arrington was spending his time campaigning rather than fulfilling his work responsibilities. I have investigated the circumstances surrounding the complaint, which are detailed in this Declaration.
8. The Grace Health System is 9 years old, and during this time, it has become relatively well-known among Lubbock's 200,000 residents, but the majority of potential patients, referring physicians, and employers outside the city's limits knew little

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about its ability to provide high-quality, comprehensive care. Thus, relationship-building in rural communities and cities outside of Lubbock represented the biggest opportunity for Grace Health System to increase its market share and to offer a better quality of life for more Texas residents.

9. In the few years immediately before Mr. Arrington came to Scott Laboratories, I hired six employees to assist with outreach to rural communities. However, these staff members generally preferred to spend much of their time at their desk or in meetings very close to Lubbock. As a result, their outreach efforts were unsuccessful, and they were reassigned or let go.

10. In 2014, I made the decision to bifurcate the management structure of Scott Laboratories and Grace Health System. As part of that process, I made the decision to establish the President of Scott Laboratories as a separate position to be held by someone other than myself to work closely with me to further develop opportunities.

11. When considering potential candidates for this opening, I quickly identified Mr. Arrington as an excellent candidate for the position. Among other qualifications, Mr. Arrington was then serving as Vice Chancellor for Research, Commercialization, and Federal Relations at Texas Tech University, and he had previously served in a number of important leadership positions and had significant, existing ties to both Lubbock and the surrounding communities.

12. When Mr. Arrington joined Scott Laboratories in July 2014, he was paid the same \$220,000 salary he received while serving as Texas Tech's Vice Chancellor.

13. Mr. Arrington's responsibilities in his new position also were very similar to those in his prior job: to develop new business, increase the profile and connection of the enterprise throughout the region (including outreach and fundraising with potential new investors), and assist in the management of Scott Laboratories' work in the field of telemedicine.

14. At all times, Mr. Arrington had significant flexibility in setting his work schedule and in determining how to strengthen the company's business.

15. Throughout his employment, Mr. Arrington remained in close contact with both me and the company's Chief Operating Office for telemedicine initiatives. Mr. Arrington also joined me for in-person meetings as necessary.

16. Mr. Arrington's outreach efforts, work in developing a digital marketing and communications campaign, and face-to-face conversations with physicians, business and community leaders, and West Texas residents proved very successful. I was extraordinarily pleased with his efforts, both before and after Mr. Arrington became a congressional candidate.

17. In fact, in the past eight months alone, Mr. Arrington accomplished more in developing awareness of Grace Health System and building relationships with business

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and community leaders in rural areas and cities outside of Lubbock than the previous six employees occupying that role combined.

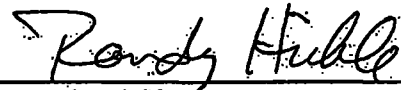
18. In particular, as President of Scott Laboratories and a representative of Grace Health System, Mr. Arrington has increased awareness and established relationships with dozens of potential customers and investors.

19. Thanks to Mr. Arrington's efforts, Scott Laboratories has six active contracts in the telemedicine area.

20. In addition, in terms of overall growth, Grace Health System's revenue has grown in excess of 20% each year for the past two years. While it is difficult to quantify precisely how much of this was attributable to Mr. Arrington's efforts, there is no doubt in my mind that he played an important role in enhancing the productivity of our efforts.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

Dated this 31st day of May, 2016



Dr. Randy Hickle
Chairman, Grace Health System
4515 Marsha Sharp Freeway
Lubbock, TX 79407

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